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9 UNITED STATES DISTRICT COURT
10
11 NORTHERN DISTRICT OF CALIFORNIA

12 UNITED STATES OF AMERICA, ex rel.
13 GREGOR LESNIK; STJEPAN PAPES,

14 Plaintiffs,

15 vs.

16 EISENMANN SE, et al.

17 Defendants.

Case No.: 5:16-cv-01120-BLF

PLAINTIFF STJEPAN PAPES'
ADMINISTRATIVE MOTION FOR LEAVE TO
FILE MOTION FOR RECONSIDERATION TO
ALLOW FOR FILING RULE 54 MOTION FOR
RECOVERY OF ATTORNEYS FEES

Ctrm: 3, 5th Floor

Judge: Hon. Beth Labson Freeman

18 TO ALL PARTIES AND TO THEIR COUNSEL OF RECORD:

19 PLEASE TAKE NOTICE that pursuant to Northern District of California Civil Local
20 Rule 7-9, Plaintiff Stjepan Papes hereby moves this Court for an order granting him leave
21 to file a motion for reconsideration of this Court's September 19, 2021 Order Granting in
22 Part and Denying Plaintiffs' Third Motion for Default Judgment as to Trafficking Victims
23 Protection Reauthorization Act Claim (Dkt # 586).

24 The Order denied a request for fees. To the extent this precludes a Rule 54 Motion
25 for Fees, Plaintiff Papes respectfully contends that the Order failed to consider material
26 facts or dispositive legal arguments which were presented to the Court before such
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1 interlocutory order. (See Villanueva v. United States, 662 F.3d 124, 128 (1st Cir. 2011)
2 (where movant shows district court has misunderstood the party or made error of
3 apprehension, reconsideration may be proper).) Plaintiff Papes had identified the basis
4 for recovery of fees, Papes had not filed a Rule 54 motion to be decided, and the time for
5 Papes to file a motion for fees still has not expired under Federal Rules of Civil Procedure
6 Rule 54 and Civil Local Rule 54-5.

7
8 Under Northern District Civil Local Rule 7-9, a party may seek leave to file a motion
9 for reconsideration any time before judgment. (N.D. Civ. L.R. 7-9(a).) The Court issued its
10 interim Order while motions for default judgment are still unresolved. This administrative
11 motion for leave is being filed on October 3, 2022, which is prior to entry of Judgment.
12 (See FRCP Rule 54(b).)

13 A motion for reconsideration may be made under Local Rules on three grounds.
14 Here, Plaintiff believes that there was a “failure by the Court to consider material facts or
15 dispositive legal arguments which were presented to the Court before such interlocutory
16 order.” (N.D. Civ. L.R. 7-9(b)(3).)

17
18 The moving party may not reargue any written or oral argument previously
19 asserted to the Court. (Id., 7-9(c). See also Hopkins v. Bonvicino, 2011 WL 995961, *1
20 (N.D. Cal. Mar. 21, 2011) (White, J.) (unpublished).) Here, the Plaintiff did not have an
21 opportunity to present oral argument on issues raised by the Order, or matters raised by
22 the Court in its Order that were not raised by moving party in his Motion.

23
24 Plaintiff thus seeks leave to move for reconsideration of the ruling and that he be
25 allowed to seek recovery of fees under the Coerced Labor Cause of Action by a Rule 54
26 Motion for Fees

27 The motion for reconsideration is based on FRCP Rules 54, 59(e) and 60(b),
28

1 Northern District Civil Local Rule 7-9, and 54-5, and this Court's inherent authority.

2 Local Rule 7-9 states "Unless otherwise ordered by the assigned Judge, no
3 response need be filed and no hearing will be held concerning a motion for leave to file a
4 motion to reconsider. If the judge decides to order the filing of additional papers or that
5 the matter warrants a hearing, the judge will fix an appropriate schedule." (N.D. Civ. L.R.
6 7-9 (d).)

7
8 Plaintiff Papes attaches as Exhibit to this motion the proposed Motion for
9 Reconsideration.

10 Plaintiff Papes request that the Court grant him leave to file a motion for
11 reconsideration and determine whether filing of additional papers or a hearing is
12 appropriate.

13
14 Dated: October 3, 2022

15
16 /s/ _____
17 William C. Dresser
18 Attorneys for Plaintiff
19 Stjepan Papes
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US ex rel Lesnik, et al v Eisenmann, et al; US Dist Ct., ND Cal. no. 5:16-cv-01120 BLF

Attachment to Administrative Motion proposed Motion for Reconsideration

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11 NORTHERN DISTRICT OF CALIFORNIA

12 UNITED STATES OF AMERICA, ex rel.
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14 Plaintiffs,

15 vs.

16 EISENMANN SE, et al.

17 Defendants.

Case No.: 5:16-cv-01120-BLF

[proposed]

PLAINTIFF STJEPAN PAPES' MOTION FOR
RECONSIDERATION TO ALLOW FOR
FILING RULE 54 MOTION FOR RECOVERY
OF ATTORNEYS FEES

Date: February 2, 2023

Time: 9:00 a.m.

Ctrm: 3, 5th Floor

Judge: Hon. Beth Labson Freeman

NOTICE OF MOTION AND MOTION

TO ALL PARTIES AND TO THEIR COUNSEL OF RECORD:

PLEASE TAKE NOTICE that on February 2, 2023, at 9:00 a.m., or as soon thereafter as the matter may be heard, in the United States District Court for the Northern District of California, San Jose, Courthouse, located at 280 South First Street, San Jose, California, in Courtroom 3, before the Honorable Judge Beth Labson Freeman, Plaintiff Stjepan Papes will and hereby does move pursuant to Federal Rules of Civil Procedure, Rules 59(e) and 60(b), Northern District Civil Local Rule 7-9, and this Court's inherent authority for reconsideration of this Court's September 19, 2021 Order Granting in Part and Denying Plaintiffs' Third Motion for Default Judgment as to Trafficking Victims Protection Reauthorization Act Claim (Dkt # 586).

Plaintiff Papes requests that he be allowed to seek recovery of fees under the Coerced Labor Cause of Action by a Rule 54 Motion for Fees.

Moving Plaintiff's motion is based on this Notice of Motion and accompanying Memorandum of Points and Authorities, and the concurrently filed Motion for Fees including supporting Declarations, all documents in the Court's file, any other matters that this Court may take judicial notice, and on such written or oral argument that the Moving Plaintiff may present to the Court.

Dated: October 3, 2022

/s/ _____
William C. Dresser
Attorneys for Plaintiff Stjepan Papes

MEMORANDUM OF POINTS AND AUTHORITIES

Plaintiff Papes requests that this Court reconsider the September 19, 2021 Order Granting in Part and Denying Plaintiffs' Third Motion for Default Judgment as to Trafficking Victims Protection Reauthorization Act Claim (Dkt # 586) and allow him to seek recovery of fees under the Coerced Labor Cause of Action by a Rule 54 Motion for Fees.

Stjepan Papes is the prevailing party on the Third Amended Complaint under the NINTH CAUSE OF ACTION Trafficking and Coerced Labor under TVPRA (18 U.S.C. § 1595). The TVPRA provides that a victim "may recover damages and reasonable attorney's fees." (18 U.S.C. § 1595, subd (a).) The NINTH CAUSE OF ACTION Trafficking and Coerced Labor under TVPRA (18 U.S.C. § 1595) requested relief of these fees: "353. Plaintiffs also request recovery of attorneys fees and costs."

Plaintiff's April 8, 2021 Renewed Motion for judgment under a coerced labor claim states:

"Plaintiffs Lesnik and Papes seek compensatory damages, exemplary damages, and attorney's fees against defendants ISM Vuzem, d.o.o., ISM Vuzem USA, Inc., Vuzem USA, Inc., HRID-Mont, d.o.o., Robert Vuzem, and Ivan Vuzem."

Dkt # 560, at pg 9

"An individual who is a victim of a violation of this chapter [Chapter 77 of Title 18] may bring a civil action against the perpetrator (or whoever knowingly benefits, financially or by receiving anything of value from participation in a venture which that person knew or should have known has engaged in an act in violation of this chapter) in an appropriate district court of the United States and may recover damages and reasonable attorneys fees." (18 U.S.C. 1595)

Id., at pg 12

1 The April 6, 2021 Renewed Motion also includes in the Conclusion “Attorney’s fees
2 should also be awarded.” Id., at pg 30.

3 The same statement of the basis of the right to fees was stated in Plaintiffs’ August
4 25, 2020 motion for judgment under a coerced labor claim. Dkt, 506 at pg 9 and 11.

5 The Court’s September 19, 2021 Order Granting in Part and Denying Plaintiffs’
6 Third Motion for Default Judgment as to Trafficking Victims Protection Reauthorization Act
7 Claim (Dkt # 586) states:

8 Papes merely states “[a]ttorney’s fees should also be awarded.” Mot. at 30. Papes
9 provides no further statements or information regarding attorney’s fees. Papes does
10 not request a specific amount of attorney’s fees. Furthermore, Papes does not
11 provides declarations or affidavits containing a statement of the services rendered
12 by each person for whom fees are requested and a brief description of their relevant
13 qualifications as is required by Civil Local Rule 54-5(b)(2)-(3). Accordingly, the Court
14 DENIES Papes’ request for attorney’s fees.
15

16 Order, at pg 31.
17

18 Plaintiff believes this should be without prejudice to Plaintiff filing a motion under
19 Rule 54 which is the motion containing that information. Civil Local Rule 54-5 cited to in
20 the September 19, 2021 Order allows for a motion for attorneys fees to be filed after entry
21 of judgment, as long as within 14 days of entry of judgment

22 (a) Time for Filing Motion. Motions for awards of attorney’s fees by the Court
23 must be served and filed within 14 days of entry of judgment by the District Court,
24 unless otherwise ordered by the Court after a stipulation to enlarge time under Civil
25 L.R. 6-2 or a motion under Civil L.R. 6-3.
26

27 Civ. Local Rule 54-5
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1 Federal Rules of Civil Procedure, Rule 54 provides for the same 14 days after entry
2 of judgment to file a motion for fees. Rule 54 states

3 “(B) Timing and Contents of the Motion. Unless a statute or a court order provides
4 otherwise, the motion must:

5 (i) be filed no later than 14 days after the entry of judgment;”

6 FRCP, Rule 54

7
8 There has not been a Judgment entered in the within action. The time to file a
9 motion under Rule 54 has not expired, and did not expire in September of 2021 when the
10 Court issued an Order as to one of several causes of action in this case. Plaintiff Papes
11 through counsel had intended to file a motion for fees after all Orders for judgment had
12 been issued and within the time period set forth in the Local Rules and in the Federal
13 Rules of Civil Procedure.

14
15 There being no judgment, relief was not requested for an extension of time to file a
16 motion for fees.

17 Relief is sought on the basis of this Court’s inherent authority regarding interim
18 rulings and on “A manifest failure by the Court to consider material facts or dispositive
19 legal arguments which were presented to the Court before such interlocutory order,” Civ.
20 Local Rule 7-9, being the request for an Order allowing for fees, being requested in I.
21 SUMMARY OF COERCED LABOR CLAIMS, with statutory authority quoted in IV.
22 ARGUMENT A. Trafficking and Coerced Labor under TVPRA (18 U.S.C. § 1595) 1.
23 Civil lawsuit is authorized in situations like those in this case, and requested in VI.
24 CONCLUSION.”

25
26 Plaintiff Papes brings this motion prior to the hearing on a pending motion for
27 judgment on FLSA claims. This motion is sought to be heard concurrently with that
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1 motion for judgment, and a motion for fees.

2 WHEREFORE, Plaintiff Papes requests that this Court reconsider the September
3 19, 2021 Order insofar as it would preclude Plaintiff Papes from recovery under the
4 concurrently filed Rule 54 motion for fees, which motion which is filed “no later than 14
5 days of the entry of judgment.’ Plaintiff Papes requests an Order allowing him to seek
6 recovery of fees under the Coerced Labor Cause of Action by the concurrently filed Rule
7 54 Motion for Fees.
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9 Dated: October 3, 2022

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11 /s/ William C. Dresser
12 Attorneys for Plaintiff
13 Stjepan Papes
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